

### **Remarks**

Favorable consideration and allowance are respectfully requested for claims 1-8, 11 and 12 in view of the foregoing amendments and the following remarks.

Claims 4 and 7 are amended to correct a chemical formula and Americanize spelling. Claims 9 and 10 are cancelled without prejudice and without any disclaimer of the subject matter therein. New claims 11 and 12 incorporate the subject matter of cancelled claims 9 and 10, in a format more suitable for U.S. practice. No new matter is introduced by these amendments.

The Office Action dated September 26, 2003 (the "Office Action") indicated that the claims in Group I, claims 1-3; Group II, claim 4; Group III, claims 5, 6, 9, and 10; and Group IV, claim 7, 8, 9, and 10, are distinct and require restriction for purposes of examination.

Responsive to the restriction requirement, Applicants provisionally elect Group I, Claims 1-3, drawn to a nano-calcium phosphates/collagen composite. This provisional election is made with traverse, it being submitted that the claims are sufficiently related that they should be examined and allowed in a single application. Applicants respectfully requests reconsideration and withdrawal of the restriction requirement under 37 C.F.R. § 1.143.

Restriction between the claims of Group I and Group II is assertedly justified on grounds that the composite of Group I as claimed can be prepared by a process not requiring the specific steps and conditions of Group II. Applicants respectfully disagree. The process of Group II (claim 4) provides the necessary steps and conditions to achieve the bio-self-assembling necessary to obtain the composite with the properties of Group I (claims 1-3). The composite of Group I cannot only be prepared by the process of Group II (claim 4).

Restriction between the claims of Group I and Groups III and IV is assertedly justified on grounds that the composite of Group I as claimed does not have to be complexed with a polymer as recited in Groups III and IV, and that

the composite and complex may have different uses (e.g., the composite can assertedly be used *in vivo* whereas the complex can assertedly be used *in vitro* as a scaffold for growing cells). However, the composite of Group I alone is not useful *in vivo*, rather it must be used in the form of scaffolds such as those of Group III or those formed by the process of Group IV.

Applicants further wish to point out that Group I, Group II, and Group IV should be allowed to proceed together because if the Examiner allows the composite claims of Group I, the process claims of Group II and Group IV would also necessarily be patentable. If a new composition is found to be patentable, the process of making that composition is necessarily patentable as well. Furthermore, MPEP § 821.04 states, "if applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims which depend from or otherwise include all the limitations of the allowable product claim will be rejoined." Thus, if the Examiner allows the claims of Group I, the claims of Group II and Group IV, which are process claims including all of the limitations of claim 1, could be rejoined under MPEP § 821.04. Therefore, Group I, Group II, and Group IV should be allowed to proceed together to avoid unnecessary withdrawal and rejoinder.

For at least the foregoing reasons, the restriction requirement should be withdrawn.

### CONCLUSION

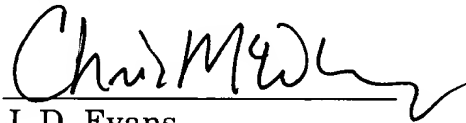
In view of the foregoing, the application is respectfully submitted to be in condition for allowance, and prompt favorable action thereon is earnestly solicited. The Examiner is thanked for his thorough review of the claims in this application.

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If there are any questions regarding this response or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any such fee or any deficiency in fees or credit any overpayment of fees to Deposit Account No. 05-1323 (Docket No.: 010313.49928US).

Respectfully submitted,



J. D. Evans

Registration No. 26,269

Christopher T. McWhinney

Registration No. 42,875

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CROWELL & MORING, LLP  
P.O. Box 14300  
Washington, DC 20044-4300  
Telephone No.: (202) 624-2500  
Facsimile No.: (202) 628-8844

CAM No.: 10313.49928